

**JOINT STATEMENT
OF
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS,
AT&T CONNECTICUT, T-MOBILE AND
SPRINT NEXTEL**

**Regarding Raised Senate Bill No. 833
An Act Concerning The Approval and Siting of Certain
Telecommunications Tower Applications**

Proposal:

Raised Senate Bill No. 833 ("SB 833") would prohibit the Connecticut Siting Council ("Council") from permitting the siting of a wireless telecommunications tower within 250 feet of a residential dwelling, place of worship or school unless: 1) the proposed tower location has been approved by the planning and zoning commission of the host municipality; or 2) the legislative body of the host municipality yields its approval authority described above to the Council.

Background:

As the Environment Committee is aware, the Council was established nearly forty (40) years ago and is charged with reviewing and making decisions on applications for the siting of certain "facilities" defined in Section 16-50i(a) of the General Statutes. Generally, the "facilities" over which the Council has jurisdiction are limited to electric transmission lines, fuel transmission facilities, electric generating facilities, electric substations, CATV head-end facilities and telecommunications towers. The Council maintains exclusive jurisdiction over the siting of these facilities and its authority pre-empts local land use (e.g., zoning and inland wetlands) authority. Left to a municipalities' local zoning and wetland authority, many of these important "facilities" of regional and state-wide significance might otherwise never be developed. Recognizing this, the legislature established the Council as the single State agency with the experience and appropriate skill set to facilitate local, regional, statewide and interstate planning for the appropriate siting of these important facilities. Although often making controversial decisions, the Council has done a remarkable job of balancing the public's need for these "facilities" against the environmental effects development of such facilities may have on our communities.

Comments:

Cellco Partnership d/b/a Verizon Wireless, AT&T Connecticut, T-Mobile and Sprint Nextel (the "Wireless Carriers") oppose this bill and urge the Committee to reject it because it is pre-empted by federal law, conflicts with federal telecommunications policy and would undermine the Council's preemptive authority.

The basis for the siting restriction imposed by SB 833 has not been provided. Nevertheless, proposed legislation prohibiting the siting of wireless telecommunications

facilities within a particular distance from a specified use or set of uses is frequently based on the perceived health effects of radio frequency ("RF") emissions. Federal law, as established in the Telecommunications Act of 1996, ("Telecommunications Act") pre-empts such legislation. In particular, Section 704 of the Telecommunications Act, provides, in relevant part: "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communication] Commission's [FCC] regulations concerning such emissions."

When seeking approval for telecommunications towers, applicants must provide the Council with the information necessary to determine whether or not a proposed facility will comply with the FCC's standards regarding RF emissions. To the extent the proposed facility complies with those standards, the Council does not have the authority to deny an application on the basis of the putative effects of RF emissions. Similarly, because the Telecommunications Act bars states from regulating the placement of wireless service facilities on the basis of RF emissions, the legislature is pre-empted by federal law from instituting a blanket ban on the siting of wireless telecommunication towers within a defined area based on the perceived effects of RF emissions.

To the extent the proposed legislation is intended to serve another purpose (e.g., to address aesthetic concerns), it still may be pre-empted by the Telecommunications Act. Specifically, Section 704 of the Telecommunications Act provides, in relevant part: "The regulation of the placement, construction and modification of personal wireless service facilities by any state or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services." The proposed legislation could prohibit the Council from permitting the siting of a wireless telecommunications tower within 250 feet of a residential dwelling, place of worship or a school. None of these terms are defined and would therefore be construed broadly and could include, for example, every public and private elementary, middle and high school, colleges and universities, vocational and technical schools, churches and synagogues, single and multi-family dwellings, etc., all without limitation. As a consequence, the proposed legislation could have the effect of entirely prohibiting the siting of a telecommunications tower within a large geographic area, an entire municipality or portions of several adjoining municipalities depending on the distance of each residential dwelling, place of worship or school from the next. Such a prohibition on service is pre-empted by the Telecommunications Act.

The proposed legislation also conflicts with federal policies regarding the development of a robust and reliable wireless network nationwide. For instance, in 2010, President Obama identified wireless telecommunications facilities as "critical national infrastructure" in part for the continuous service that can be provided during times of natural and manmade disasters. Often, during these times, schools and places of worship are used as shelters or outposts to provide needed services to an affected area. By prohibiting the siting of telecommunications towers within 250 feet of schools or places of worship, the proposed legislation could thwart the siting of this "critical national infrastructure" and impact the

ability of those living in or stationed at schools and places of worship during times of disaster from communicating with emergency service providers and family members.

More recently, in his State of the Union address President Obama pledged to expand access to mobile broadband services to nearly all U.S. citizens. Specifically, the President said, "[w]ithin the next five years, we'll make it possible for businesses to deploy the next generation of high-speed wireless coverage to 98 percent of all Americans...This isn't about faster Internet or fewer dropped calls. It's about connecting every part of America to the digital age."

This goal is not achievable if wireless carriers are prohibited from installing critical national wireless infrastructure in large geographic areas simply because those areas are proximate to residences, places of worship or schools.

Finally, the provision in SB 833 that gives the host municipality's planning and zoning commission and/or legislative body a role in the site selection process, suggests that the legislature believes municipalities have little or no role in the Council process as it exists today. This is clearly not the case. The existing Council process requires applicants to consult and interact with municipalities well in advance of the filing of any facility application; gives municipalities the right to receive coverage assessments from the wireless carriers; allows the municipalities to hold public meetings and hearings on the tower proposals before an application is filed; give the municipalities to ability to submit location preferences for tower sites to the Council; and gives the municipality the right to become a party in the Council proceeding and actively participate in the hearing process.

Conclusion:

Because the proposed legislation is pre-empted by federal law, the Wireless Carriers oppose SB 833 and urge the Committee to reject it.